

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline.

Having been advised of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitutes grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the investigative file and report of the Board prepared by F. Carone and dated August 21, 2005 and the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in the Board's investigative report or in this document that are either now known to the Board or may be discovered.

5. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts ("Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. Respondent is licensed by the Board as an osteopathy physician and surgeon, License Number R7928 which was first issued on July 27, 1977. Respondent's license is current, and was current and active at all times relevant herein.

3. During the years 2003, and 2004, licensee issued controlled substance prescriptions to three (3) people that he had never examined or established a physician-patient relationship with and he further did not keep records or patient charts on these three (3) individuals. One of these individuals was Respondent's office manager whom Respondent worked with, observed her physical condition and whom Respondent trusted. The other two individuals were roommates of Respondent's office manager and the office manager interceded on behalf of these two individuals. Additionally, the years covered in the Joint Proposed Findings of Fact should be 2003-2004.

4. Licensee issued at least four (4) prescriptions for controlled substances, Vicodin and Darvocet to patients J.H., J.J., and D.E. without a physician-patient relationship between January 2, 2003 and May 6, 2004. The prescriptions were for controlled substances of Darvocet and Vicodin.

<u>Date</u>	<u>Pharmacy</u>	<u>Rx#</u>	<u>Patient</u>	<u>Refills</u>	<u>Drug</u>
01/02/03	Target	440385	J.J.	1	#30 Vicodin 5mg-500mg
08/20/03	Target	4404176	J.H.	0	#20 Darvocet N 100mg-650mg
09/06/03	Target	4404265	J.J.	0	#30 Vicodin 5mg-500mg
09/11/03	Walgreens	757114	J.H.	0	#30 Vicodin 5mg-500mg
09/17/03	Walgreens	1370695	J.J.	0	#30 Vicodin 5mg-500mg

09/25/03	Walgreens	764381	J.H.	0	#30 Vicodin 5mg-500mg
10/02/03	Walgreens	147880	J.J.	1	#30 Vicodin 5mg-500mg
10/11/03	Target	4405268	J.H.	1	#30 Vicodin 5mg-500mg
10/24/03	Walgreens	153469	D.E.	1	#30 Vicodin 5mg-500mg
02/12/04	Target	4405268	J.J.	2	#30 Vicodin 5mg-500mg
02/18/04	Walgreens	182916	J.H.	1	#40 Vicodin 5mg-500mg
03/18/04	Walgreens	65400	D.E.	1	#40 Vicodin 5mg-500mg
03/25/04	Walgreens	864555	J.J.	3	#40 Vicodin 5mg-500mg
04/17/04	Walgreens	71370	D.E.	3	#40 Vicodin 5mg-500mg
04/20/04	Walgreens	876954	J.J.	2	#40 Vicodin 5mg-500mg
04/22/04	Walgreens	199146	J.H.	1	#40 Vicodin 5mg-500mg
05/06/05	Target	44505806	J.H.	2	#40 Vicodin 5mg-500mg

5. Licensee did not maintain a record of the controlled substances prescribed to J.H., J.J., and D.E.

6. The Board of Narcotics and Dangerous Drugs determined in late 2004 that Licensee had moved his registered practice location from 8060 Clayton Road without notifying the Board of Narcotics and Dangerous Drugs. BNDD then terminated Licensee's controlled substance registration retroactive to March 1, 2004 during which time prescriptions for controlled substances were issued on six occasions between March 18, 2004 and May 6, 2004.

Date	Pharmacy	Rx#	Patient	Refills	Drug
03/18/04	Walgreens	65400	D.E.	1	#40 Vicodin, 5mg-500mg
03/25/04	Walgreens	864555	J.J.	3	#40 Vicodin, 5mg-500mg
04/17/04	Walgreens	71370	D.E.	3	#40 Vicodin, 5mg-500mg
04/20/04	Walgreens	876954	J.J.	2	#40 Vicodin, 5mg-500mg
04/22/04	Walgreens	199146	J.H.	1	#40 Vicodin 5mg-500mg
05/06/04	Target	44505806	J.H.	2	#40 Vicodin 5mg-500mg

7. Vicodin is a brand name for a drug product containing hydrocodone, which is listed as a Schedule 3 controlled substance.

8. Darvocet is a brand name for a drug product containing dextropropoxyphene, which is

listed as a Schedule 4 controlled substance.

9. Respondent worked at more than one clinic location. The locations where Respondent worked did not secure prescription pads and prescription pads were noted in a BNDD inspection as being left in unlocked drawers in the examination rooms where patients had access to them. Respondent and other physicians used the same examination rooms.

10. Prescribing controlled substances for persons without an established physician-patient relationship violates the applicable standard of care and is therefore negligent within the meaning of Section 334.100.2(5), RSMo 2000. Respondent has been guilty of "repeated negligence" within the meaning of the statute.

11. Respondent has violated the drug rules and regulations of this State and the federal government.

12. Cause exists to discipline Respondent's license pursuant to § 334.100.2(5) and (13), RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter. For the purposes of this subdivision, "repeated negligence" means the failure, on more than one occasion, to use that degree of skill and learning ordinarily used under the same or similar circumstances by the member (sic) of the applicant's or licensee's profession;

(13) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

JOINT PROPOSED CONCLUSIONS OF LAW

1. Cause exists to discipline Respondent's license pursuant to § 334.100.2(5) and (13),

RSMo 2000, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter. For the purposes of this subdivision, "repeated negligence" means the failure, on more than one occasion, to use that degree of skill and learning ordinarily used under the same or similar circumstances by the member (sic) of the applicant's or licensee's profession;

(13) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

2. Respondent has violated the following Missouri drug rules and regulations:

Section 195.050.6, RSMo states: Every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

Regulation 19 CSR 30-1.048(2) states:

Each individual practitioner shall maintain a record of the date, full name and

address of the patient, the drug name, strength, dosage form and quantity for all controlled substances prescribed or administered. This record may be maintained in the patient's medical record.

Section 195.030.2 RSMo states: No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare, distribute, dispense or prescribe any controlled substance and no person as a wholesaler shall supply the same, without having first obtained a registration issued by the department of health and senior services in accordance with rules and regulations promulgated by it. No registration shall be granted for a term exceeding three years.

Regulation 19 CSR 30-1.017(1) states: Period of registration. (A) Any registration, except a re-registration, shall be current and effective for 36 months from the date issued or until the expiration date assigned at the time the registration is issued. A re-registration shall be current and effective for 36 months from the expiration date or the previous registration, provided that the application for re-registration was received prior to the expiration of the previous registration. No person who is required to be registered shall conduct any activity for which registration is required without a current registration.

Regulation 19 CSR 30-1.031(1), which states in material part; All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.

6. Section 195.040.7, RSMo 2000, states in material part: 7. A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the department of health and senior services upon a finding that the registrant: (4) Has violated any federal controlled substances statute or regulation, or any provision of sections 195.005 to 195.425 or regulation promulgated pursuant to sections 195.005 to 195.425.

3. Licensee's conduct, as established by the foregoing facts, falls within the intendments of § 334.100.2(5) and (13), RSMo 2000.

4 Cause exists for the Board to take disciplinary action against Licensees' license under § 334.100.2(5) and (13), RSMo 2000.

II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of § 621.110, RSMo. This Agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement:

1. The medical license, No. R7928, issued to Licensee is hereby **PUBLICLY REPRIMANDED.**

2. Respondent shall complete a controlled substances prescribing course and a medical records keeping course acceptable to the Board within six (6) months of the date of the execution by the Board of this Settlement Agreement.

3. Licensee shall notify, within fifteen (15) days of the effective date of this Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Licensee shall notify any physician assistants or other allied health care professionals he supervises of the disciplinary action imposed. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

4. For purposes of this Agreement, unless otherwise specified in this Agreement, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board in this Agreement shall be forwarded to the State Board of Registration for the Healing Arts, Attention: Investigations, P.O. Box 4, Jefferson City, Missouri 65102.

5. This Agreement does not bind the Board or restrict the remedies available to it concerning any other violations of Chapter 334, RSMo, by Licensee not specifically mentioned in this document or the Board's investigative report of August 21, 2005. This Agreement resolves all allegations identified in the Board's investigative report or this Settlement Agreement.

6. No additional order shall be entered by this Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before this Board as a contested case in accordance with the provisions of Chapter 536, RSMo. Respondent understands and agrees that the Board will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

~~7. If the Board determines that the Licensee has violated a term or condition of the disciplinary period which violation would also be actionable in a proceeding before the Administrative Hearing Commission or in the circuit court, the Board may elect to pursue any lawful remedies afforded it and is not bound by this Agreement in its election of remedies concerning that violation.~~

R. Lamberson
T. Steinma
5/30/06

8. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the

remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

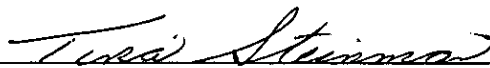
9. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

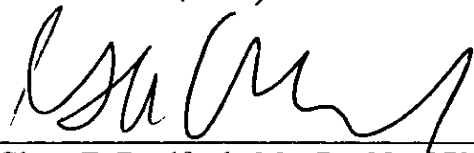

ROBERT L. LAMBERG, M.D.

Date: _____

BOARD


Tina Steinman
Executive Director

Date: 5/30/06


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Healing Arts

EFFECTIVE THIS 30 DAY OF May, 2006.